THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

C.M.A.No.1999 of 2021

1.Maria Nivetha
2.Minor Santiyo Leveil Tristan
3.Minor Santiyo Trewin
4.Roslai Antony Grace ...Appellants
(2nd and 3rd Minor Appellants rep. by their mother Maria Nivetha, Natural Guardian and Next Friend to the Minor Appellants)

Vs.

1.Soosai

2.Future Generali India Insurance Company Limited,
Plot No.55, 3rd Floor,
Vijaya Raghava Road, T.Nagar,
Chennai - 600 017. ...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 20.12.2019 made in MACTOP.No.6733/2018 on the file of the Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

For Appellants : Mr.A.G.F.Terry Chella Raja

For Respondents : Mr.M.B.Raghavan
for M/s.M.B.Gopalan Associates for R2
R1-Exparte before the Tribunal

JUDGMENT

(Judgment of the Court was made by R.SUBRAMANIAN, J.)

Challenge in this appeal is to the award of the Motor Accident Claims Tribunal, Chennai, granting a sum of Rs.1,41,06,250/- with interest at 7.5% per annum for the death of one S.Christober in a road accident that occurred on 03.05.2018 at about 9 a.m.

2.The claimants, who are the wife, children and mother of the deceased sought for a compensation of Rs.5,00,00,000/-. According to them, the accident occurred due to the rash and negligent driving of the driver of the lorry bearing Registration No.TN-04-X-7416. Describing the accident, the claimants would state that when the deceased was riding his motor cycle bearing Registration No.TN-22-AM-8438 from Madambakkam to 200 feet Radial Road at Medavakkam Main Road, near Sakthi Kalyana Mandabam, Kovilambakkam, the lorry bearing Registration No.TN-04-X-

7416, which was driven by its driver in a rash and negligent manner came from behind and hit the deceased. As a result of the impact, the deceased was thrown off the vehicle, sustained fatal injuries and died on the same day. Contending that the deceased was working as a Senior Development Manager in Standard Chartered Bank and earning Rs.2,50,000/- per month, the claimants sought for compensation as aforesaid.

3.The claim was resisted by the Insurance Company contending that the accident did not occur in the manner suggested by the claimants. The rider of the motor cycle / deceased also contributed to the accident due to his negligent driving of the two wheeler. The income particulars and the age of the deceased were denied and the claimants were put to strict proof of the same. The compensation claimed was termed as excessive.

4.At trial, the 1st petitioner was examined as P.W.1, one Sivakumar, an eye-witness to the accident was examined as P.W.2 and one Abirami - HR, Standard Chartered Bank was examined as P.W.3. Exs.P1 to P24 were marked on the side of the claimants. No evidence was let in on behalf of the Insurance Company. Ex.P1 is the First Information Report and

Exs.P7 to P9 were the income tax returns for the assessment years 2016-2017, 2017-2018 and 2018-2019 respectively. The copies of the pay slips were marked as Ex.P23. Relying upon the contents of the First Information Report and rough sketch which were marked as Exs.P1 and P2 respectively and in the absence any evidence on the side of the Insurance Company, the Tribunal concluded that the accident occurred due to the rash and negligent driving of the driver of the lorry.

5.On the quantum, the Tribunal took the monthly income of the deceased at Rs.83,833/- based on the salary slip for the month of April, 2018, since the accident took place on 03.05.2018. The Tribunal added 25% towards future prospects, deducted 1/4th towards personal expenses, applied the multiplier of 15 and arrived at the total loss of dependency at Rs.1,40,06,250/-. It awarded a sum of Rs.15,000/- for funeral expenses, Rs.15,000/- each to the wife, children and the mother towards love and affection and Rs.25,000/- towards consortium. Thus, the total compensation was arrived at Rs.1,41,06,250/-. While the Insurance Company has accepted the award, the claimants have come up with this appeal seeking enhancement.

6.We have heard Mr.A.G.F.Terry Chella Raja, learned counsel for the appellants and Mr.M.B.Raghavan, learned counsel for the 2nd respondent / Insurance Company.

7.Mr.A.G.F.Terry Chella Raja, learned counsel appearing for the appellants would contend that the Tribunal was not right in going by the salary slip, since the income tax returns would show that the deceased was getting some other allowances also, apart from the salary. He would also fault the Tribunal for having excluded the house rent allowance and special provision allowance from consideration. Contending that the Tribunal was not right in taking the basic salary alone for the purpose of determining the compensation, Mr.Terry Chella Raja would submit that the Tribunal should have gone by the income tax returns, which have shown a consistent increase in the income from the assessment year 2016-2017 to the assessment year 2018-2019. He would also submit that the Tribunal erred in granting 25% towards future prospects, according to him, it should have been 30%. He would also fault the Tribunal for having awarded only Rs.60,000/- towards loss of love and affection and Rs.25,000/- towards loss of consortium.

8.Contending contra, Mr.M.B.Raghavan, learned counsel appearing for the Insurance Company would submit that the Tribunal cannot be faulted for having taken the basic salary, since there was a difference in income between the salary certificate and the income tax returns. He would fairly conceed that the Tribunal should have taken into account the future prospects at 30% and not at 25%. On the conventional damages, loss of love and affection and consortium, the learned counsel for the Insurance Company would conceed that this Court should go by the judgment of the Hon'ble Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and Others*** reported in ***(2017) 16 SCC 680.*** We have considered the rival submissions.

9.We find some force in the submissions of the learned counsel for the appellants, regarding the fixing of income made by the Tribunal. No doubt, the Tribunal was right in taking the last earned salary as basis but it erred in excluding the house rent allowance and special provision allowance and also not including the deduction made for provident fund. The deduction made for provident fund is after all to be paid to the employee at the time of his retirement or to the dependents in case of any unfortunate event of the employee passing off while in service. We therefore, find that it will be safe for us to go by the income tax returns, which would show a steady increase and it also demonstrates that the deceased was drawing certain other allowances apart from what is shown as salary. Even that would be a loss to the dependents. Hence, we take the income tax returns, which has been marked as Ex.P19 as the basis for calculating the loss of dependency.

10.From Ex.P19, which covers assessment year 2018-2019, we find that the annual income tax return is Rs.21,22,143/-. The claimant has paid an income tax of Rs.4,26,270/-. Therefore, the income after the deduction of income tax would be Rs.16,95,873/-. We will have to add 30% towards future prospects, which means the annual income would be Rs.22,04,635/-. If we deduct 1/4th towards personal expenses, the annual loss of dependency would be Rs.16,53,476/-. If multiplier of 15 is applied, the total loss of dependency would work out to Rs.2,48,02,140/-.

11.As far as non-conventional damages are concerned, we award a sum of Rs.15,000/- towards funeral expenses, Rs.1,20,000/- (Rs.40,000 each) towards loss of love and affection for the children and mother and Rs.15,000/- towards loss of estate. Thus, the total compensation worked out to Rs.2,49,92,140/-, which is rounded off to Rs.2,50,00,000/-. The Tribunal has granted interest at 7.5% per annum and the same is confirmed. The compensation granted above is apportioned as follows:-

i) The mother of the deceased will get a sum of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) with proportionate interest as awarded by the Tribunal

ii) The wife of the deceased and the minor children will take Rs.75,00,000/- (Rupees Seventy Five Lakhs) each.

iii) The amount, if any, already withdrawn by the wife and the mother of the deceased would be deducted from their shares. The major claimants are permitted to withdraw their share awarded to them.

iv) The share of the minor claimants shall be kept in a cumulative interest earning fixed deposit in a Nationalized Bank till they attain majority. It shall be paid over to them, on their attaining majority.

v)The claimants shall pay the necessary Court fee payable in the appeal.

12.In view of the above, this Civil Miscellaneous Appeal is **partly allowed**. No costs.

(R.S.M., J.) **(N.S., J.)**
16.11.2023

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Internet:Yes
Index:No
Speaking
Nuetral Citation :No

R.SUBRAMANIAN, J.
and
N.SENTHILKUMAR, J.

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To:-

The Motor Accident Claims Tribunal,
Chief Judge, Court of Small Causes,
Chennai.

C.M.A.No.1999 of 2021

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